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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209617
Party	Defendant Bram Warren, Company
Correspondence Address	BRAM WARREN,COMPANY 18100 SW 50TH ST SOUTHWEST RANCHES, FL 33331-1012 UNITED STATES bramwarren@bramwarren.com
Submission	Opposition/Response to Motion
Filer's Name	Debra Wiseberg
Filer's e-mail	bramwarren@bramwarren.com
Signature	/Debra Wiseberg/
Date	02/25/2014
Attachments	ResponseMotionExtensionTimeandBrief.pdf(2117262 bytes) Exhibit A.pdf(141736 bytes) Exhibit B.pdf(152967 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Xikar, Inc.,

Opposer,

V.

Mark: Cicar

Debra Wiseberg d/b/a
Bram Warren Company,

Applicant.

S

Opposition No. 91209617

S

Mark: Cicar

Serial No. 85/652496

RESPONSE TO MOTION FOR EXTENSION OF TIME

COMES NOW, Debra Wiseberg d/b/a Bram Warren Company, Applicant and Counterclaim Plaintiff, (hereafter "Applicant"), to respond to Xikar, Inc., a Kansas corporation, Opposer and Counterclaim Defendant's, (hereafter "Opposer") Motion for Extension of Time. The Opposer has filed a motion for an extension of time to answer the Applicant's discovery requests and of the testimony periods in this proceeding. The Applicant respectfully requests that the Trademark Trial and Appeal Board deny the Opposer's Motion for Extension of time to answer the Applicant's outstanding discovery requests as requested by the Opposer. The Applicant further requests that the Trademark Trial and Appeal Board grant the Applicant an extension of time to file a timely Motion to Compel. The Opposition Brief in Support of the Applicant's Response to the Opposer's Motion for Extension of Time is attached hereto.

Dated: February 25, 2014.

Respectfully submitted,

Debra Wiseberg d/b/a Bram Warren Company

18100 S.W. 50 Street

Southwest Ranches, FL 33331 Telephone No.: (954) 297-0329 Xikar, Inc. v. Debra Wiseberg d/b/a Bram Warren Company Opposition No. 91209617 Serial No. 85/652496

Email: bramwarren@bramwarren.com

CERTIFICATE OF FILING

I hereby certify that the Response to Motion for Extension of Time and Opposition Brief in Support of Applicant's Response were filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board by ESTTA on February 25, 2014.

By: Felle West

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Response to Motion for Extension of Time and Opposition Brief in Support of Applicant's Response were sent to the counsel for the Opposer by the United States Postal Service, first class mail on February 25, 2014 to the following address:

> Ginnie C. Derusseau Erickson, Kernell, Derusseau & Kleypas LLC 8900 State Line Road, Suite 500 Leawood, KS 66206

Debra Wiseberg

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Xikar, Inc.,

Opposer,

V.

Bram Warren Company,

Applicant.

OPPOSITION BRIEF

IN SUPPORT OF APPLICANT'S RESPONSE

TO OPPOSER'S MOTION FOR EXTENSION OF TIME

STATEMENT OF FACTS

The Opposer, through counsel, Ginnie C. Derusseau sent a letter by email to the Applicant on Friday, February 7, 2014 at 3:09 p.m., requesting that the Applicant supplement the discovery responses given by the Applicant to the Opposer's discovery requests and further stated that the Opposer was unable to respond to the Applicant's discovery requests when due "in light of travel schedules and work load". The letter from Ginnie C. Derusseau also requested that I consent to a motion for an extension of time, for the aforementioned reasons, before the close of business on Monday, February 10, 2014. I did not agree to give my consent to such motion and further stated in my letter to Ginnie C. Derusseau, the Opposer's counsel, in response to such requests dated February 10, 2014 that I did not believe that the reasons given by the Opposer justified their inability to respond to the Applicant's discovery requests when due and I requested that the Opposer respond to the Applicant's discovery requests when due. The Opposer then immediately filed their unconsented Motion for Extension of Time. I respectfully submit

my arguments against the Opposer's Motion for Extension of Time as stated below.

ARGUMENT

The Opposer stated in their motion for an extension of time that this was the "first extension request sought by Opposer". The Opposer has actually filed two previous extensions of time, totaling 90 days before the filing of this extension. I have attached copies of the previous filed extensions for your reference as Applicant's Exhibit "A" and Applicant's Exhibit "B". The previous extensions of time filed by the Opposer in this matter were extensions of time to oppose the Applicant's mark. The last extension filed by the Opposer required the showing of good cause, such cause stated by the Opposer was "the potential opposer needs additional time to investigate the claim". Pursuant to TBMP §202 and 37 CFR §2.102(c)(2) if a person was granted a thirty-day extension of time, that person may file a request for an additional sixty-day extension of time, which will be granted only for good cause shown. The Opposer has not shown to the Applicant, to this date, why a final extension of time was needed by the Opposer to "investigate the claim". The Opposer has disclosed no specific information or documents pertaining to an investigation performed by the Opposer regarding the Applicant. The Notice of Opposition stated no specific facts about the Applicant that could not be ascertained simply by reviewing the application filed to register the mark "Cicar". The Opposer has already been granted two extensions of time in this matter and is now requesting a third extension of time, totaling 120 days.

The Opposer's response to all of the Applicant's outstanding discovery requests (Second Set of Interrogatories; Request for Production of Documents; and Request for Admissions), were due no later than February 17, 2014, this date is 37 days after service of all such requests and was an ample amount of time for the Opposer to respond to such requests in the Applicant's opinion. The Opposer waited 27 days after service of such requests to inform the Applicant through an emailed letter, sent on February 7, 2014 that they were unable to respond to

the Applicant's outstanding discovery requests when due. The Opposer stated no specific facts in the letter to the Applicant regarding their inability to respond to the discovery requests only that "in light of travel schedules and work load, Xikar is unable to meet this deadline". The Opposer has stated in their Motion for Extension of Time that they can't respond to the Applicant's "outstanding discovery requests due to Opposer's recent travel schedule". The Opposer has stated no specific facts regarding their "recent travel schedule" and why it prevented Xikar, Inc. from responding to the Applicant's discovery requests when due. As previously stated the Opposer had 37 calendar days to respond to the Applicant's request.

Pursuant to TBMP § 509.01(a), "a motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking factual detail are not sufficient". The Opposer has not set forth particular facts to constitute good cause for not responding to the Applicant's outstanding discovery requests when due. TBMP § 509.01(a), further states that "moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor".

Pursuant to TBMP § 502.02(b) every motion must embody or be accompanied by a brief. 37 CFR § 2.127(a), states, "every motion, shall contain a full statement of the grounds, and shall embody or be accompanied by a brief". It is the Applicant's opinion that the Opposer's Motion for Extension of Time appears to lack either information or facts that would constitute a proper brief.

In addition to the other requests made by the Applicant in this brief, I request that the Trademark Trial and Appeal Board hold the Opposer to the non-specific statements made in their motion and not allow the Opposer to reply to the Applicant's response brief by naming new facts that should have been named by the Opposer in their original motion. There is no opportunity for

a party to file a surreply brief in response to a parties reply brief if one is filed (see 37 CFR § 2.2127(a); due to reasoning such as "one's arguments and authority should be presented thoroughly in the motion or the opposition brief thereto" (Johnston Pump/General Valve In. v. Chromalloy American Corp., 13 USPQ2d 1719, 1720 n. 3 (TTAB 1989); TBMP § 502.02(b), (Note 10).

In my letter dated February 10, 2014 to Ginnie C. Derusseau, written in response to her letter for my consent to an extension of time, I stated "in my opinion the reasons given by your client do not justify their inability to respond to the Applicant's discovery requests when due. February 17, 2014 is 37 days after service of all outstanding discovery requests and is an ample amount of time for your clients to respond to such requests." I further stated in my letter to Ms. Derusseau "please have Xikar, Inc. respond to all outstanding discovery requests due by February 17, 2014". The Opposer's counsel, Ginnie C. Derusseau responded by email stating only that "it is unfortunate that you are unreasonable and unwilling to consent to the motion. Consent to such motions are overwhelmingly consented to as common courtesy. We will be filing the motion without consent." I thought Ginnie C. Derusseau's use of the term 'unreasonable" in her email to me contrived as I had used the same term in my letter to Ms. Derusseau, in which I stated that I thought it was "unreasonable" to require a response in one business day for my consent to a motion to extend time. The reason I included the term "unreasonable" in my response to the Opposer's request was solely to inform the Opposer's counsel to not expect such a response in such a limited amount of time (1 business day) in the future. The Applicant has at no time in this proceeding been unreasonable. The Opposer requested an extension of time to respond to the Applicant's outstanding discovery requests without stating any specific facts that would warrant such an extension.

The Opposer stated in their motion for extension of time that "specifically, Applicant has not produced all of the information requested by Opposer"; as additional reasoning for the Opposer's filing of such motion. The Applicant's discovery responses to the Opposer's discovery requests have no bearing on the Opposer's ability to respond to the Applicant's outstanding discovery requests when due and the two issues should not have been combined by the Opposer's counsel as a means to justify their Motion for Extension of Time. Moreover, the Applicant responded to all of the Opposer's discovery requests when due on December 30, 2013. Many of the discovery requests served on the Applicant by the Opposer were overly broad, overinclusive, and inherently vague to name a few of the objections contained in the Applicant's responses to the Opposer's discovery requests, many such requests being boiler plate requests, in the Applicant's opinion, for information or documentation that the Applicant believes the Opposer is not entitled to, for the various reasons given in my objections to such requests. Those arguments will be saved for motions and responses filed concerning such discovery requests. Though, the Opposer's counsel's request on February 7, 2014 for supplementation of the Applicant's responses to the Opposer's discovery requests was mostly vague stating that numerous responses were incomplete and did not address most of the objections contained within such responses. The Applicant has served supplemental responses in reply to the Opposer's request for supplementation.

Though I believe the Trademark Trial and Appeal Board would consider the following facts to have no bearing on the Opposer's ability to respond to the Applicant's outstanding discovery requests when due, I thought they should be mentioned. Even though discovery spanned six (6) months; the Opposer served their discovery requests upon the Applicant amidst major national holidays and the Applicant still responded to such requests when due even though it was a hardship for the Applicant. The Opposer's counsel could possibly respond to this

statement by stating that the Applicant could have requested that the Opposer consent to a Motion to Extend Time as well, but I feel it was fair to access though the Board may not concur, that the Opposer understood that such requests served amidst major national holidays would be a hardship unto the Applicant. I did not request nor file a Motion for Extension of Time to respond to discovery requests when due, because I was unsure that such request would be granted (even with the Opposer's consent) and was unwilling to risk losing the right to object to such discovery requests.

I would state for the record, since the Opposer's counsel has chosen to reference the Applicant's responses to the Opposer's discovery requests in their Motion for Extension of Time; that the Applicant's First Set of Interrogatories for the Opposer were for the most part unanswered, incorrectly answered, or incompletely answered by the Opposer. I have requested correction and supplementation of such answers.

The Opposer and their counsel have essentially forced an extension of time to respond to the Applicant's outstanding discovery requests by waiting so long to inform the Applicant and the Trademark Trial and Appeal Board that the Opposer would not be responding to the Applicant's discovery requests when due. A motion to extend time can take a number of days to be granted and could not have been granted or denied in the time remaining for the Opposer to respond to the Applicant's outstanding discovery requests due.

Considering the Opposer's testimony period is currently set to begin on March 13, 2014 and that the Opposer did not respond to the Applicant's discovery requests when due. I would request an extension of time to file a Motion to Compel regarding such discovery requests, as needed, after determination of this motion by the Trademark Trial and Appeal Board. To enable the Applicant to file a timely Motion to Compel, before the Opposer's testimony period begins,

by resetting the testimony periods. The Applicant would request a 30 day extension or such extension of time as deemed reasonable by the Trademark Trial and Appeal Board.

CONCLUSION AND REQUEST

A party is required to use due diligence in responding to another parties discovery requests and it is the Applicant's opinion that the Opposer has not shown such due diligence in this matter. Instead the Opposer filed a non-specific motion loosely stating that they could not respond to the Applicant's "outstanding discovery requests due to Opposer's recent travel schedule". The Opposer has further tried to combine two issues in such motion, one having no bearing on the other, to justify their need for an extension at this time. It is the Applicant's opinion that the Opposer is filing this motion to allow them additional time to respond to the Applicant's discovery requests and has tried to confuse the issue by incorporating references and statements regarding the Applicant's responses to the Opposer's discovery requests. Specific motions regarding discovery responses and protection from discovery requests need to be filed in this matter to finalize discovery, not the granting of this extension as requested by the Opposer.

In addition, the Plaintiff's Pretrial Disclosures are due from the Opposer on February 25, 2014. The Applicant ponders if this motion is also a ruse to delay such disclosures and testimony period for the Opposer. If the Opposer does not serve such pretrial disclosures on February 25, 2014 as currently set; than the Applicant would further request and reserve her right to remedies allowed under TBMP § 702; TBMP § 702.01; 37 CFR § 2.121(e). 37 CFR § 2.121(e), states "when a party fails to make required pretrial disclosures, any adverse party may have remedy by way of a motion to the Board to delay or reset any subsequent pretrial disclosure deadlines and/or testimony periods". The Applicant does not consider the extension of time requested by her in this brief, as exercising the above right, since this extension of time is being

forced on the Applicant by the Opposer who has not responded to discovery requests when due. I have no inside knowledge as to the reasons behind the Opposer and their counsel's filing of this extension of time, but a consequence of such extension is a delay in the Opposer's testimony period, which may be an underlying reason for this extension. Either way the Opposer is receiving the benefit of having their testimony period delayed.

This opposition case filed by the Opposer has detrimentally impacted the current Applicant and her predecessors businesses, which are and were new small businesses. The Applicant and her predecessors have been forced by the Opposer to either relinquish rights to their mark "Cicar" or engage in this litigation. If inconvenience is considered when granting a Motion to Extend Time, then I would respond by stating that this entire litigation has been more than an inconvenience unto the Applicant and her predecessors brought upon them by the Opposer.

The Applicant respectfully requests that the Trademark Trial and Appeal Board deny the Opposer's Motion for Extension of Time, as requested, in consideration of the aforementioned arguments. Furthermore, the Applicant respectfully requests that the Trademark Trial and Appeal Board grant the following request:

To grant the Applicant an extension of time to file a timely Motion to Compel (by resetting the testimony periods), due to the fact that the Opposer, did not respond to the Applicant's discovery requests when due. The Applicant would request a 30 day extension of time or such extension of time as deemed reasonable by the Trademark Trial and Appeal Board. To allow the Applicant additional time to file a Motion to Compel discovery responses before such responses are served or after the Opposer has served their responses to all outstanding discovery requests, depending on the Board's determination on this matter. To allow

Xikar, Inc. v. Debra Wiseberg d/b/a Bram Warren Company Opposition No. 91209617 Serial No. 85/652496

the Applicant to request appropriate sanctions (such as: forfeiture of the Opposer's rights to object to the discovery requests on their merits, TBMP §527.01(c); Request for Admissions being admitted, TBMP §527.01(d), 37 CFR § 2.120(j)(3)(i); and to have the Opposer produce copies of documents) against the Opposer within such Motion to Compel.

DATED: February 25, 2014

Respectfully submitted,

By: John Warren Company
Debra Wiseberg d/b/a Bram Warren Company

18100 S.W. 50 Street

Southwest Ranches, FL 33331 Telephone No.: (954) 297-0329

Email: bramwarren@bramwarren.com

CERTIFICATE OF FILING

I hereby certify that the Response to Motion for Extension of Time and Opposition Brief in Support of Applicant's Response were filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board by ESTTA on February 25, 2014.

Hela Wisd

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Response to Motion for Extension of Time and Opposition Brief in Support of Applicant's Response were sent to the counsel for the Opposer by the United States Postal Service, first class mail on February 25, 2014 to the following address:

Ginnie C. Derusseau Erickson, Kernell, Derusseau & Kleypas LLC 8900 State Line Road, Suite 500 Leawood, KS 66206

By:

Debra Wiseberg

EXHIBIT "A"

Submitted by Debra Wiseberg, Applicant in Opposition No. 91209617 Xikar, Inc. v. Debra Wiseberg d/b/a Bram Warren Company

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant:

Bram Warren, Company

Application Serial Number:

85652496

Application Filing Date:

06/14/2012

Mark:

CICAR

Date of Publication

11/06/2012

First 30 Day Request for Extension of Time to Oppose

Pursuant to 37 C.F.R. Section 2.102, XIKAR, INC., 3305 TERRACE STREET, KANSAS CITY, MO 64111, UNITED STATES, a corporation organized under the laws of KANSAS, respectfully requests that it be granted a 30-day extension of time to file a notice of opposition against the above-identified mark.

The time within which to file a notice of opposition is set to expire on 12/06/2012. XIKAR, INC. respectfully requests that the time period within which to file an opposition be extended until 01/05/2013.

Respectfully submitted, /J. David Wharton/

11/14/2012

J. DAVID WHARTON

STINSON MORRISON HECKER LLP

1201 WALNUT STREET, SUITE 2900STINSON TRADEMARK ADMINISTRATOR

KANSAS CITY, MO 64106-2150

UNITED STATES

TRADEMARK@STINSON.COM, DWHARTON@STINSON.COM

816.842.8600

EXHIBIT "B"

Submitted by Debra Wiseberg, Applicant in Opposition No. 91209617 Xikar, Inc. v. Debra Wiseberg d/b/a Bram Warren Company

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant:

Bram Warren, Company

Application Serial Number:

85652496

Application Filing Date:

06/14/2012

Mark:

CICAR

Date of Publication

11/06/2012

60 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, XIKAR, INC., 3305 TERRACE STREET, KANSAS CITY, MO 64111, UNITED STATES respectfully requests that he/she/it be granted an additional 60-day extension of time to file a notice of opposition against the above-identified mark for cause shown .

Potential opposer believes that good cause is established for this request by:

The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 01/05/2013. XIKAR, INC. respectfully requests that the time period within which to file an opposition be extended until 03/06/2013.

Respectfully submitted, /J. David Wharton/

01/07/2013

J. DAVID WHARTON

STINSON MORRISON HECKER LLP

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